

Statement by the former presidents of the Constitutional Tribunal: Marek Safjan, Jerzy Stępień, Bohdan Zdziennicki and Andrzej Zoll

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Maximilian Steinbeis Mi 30 Nov 2016

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The following statement has been issued by four former presidents of the Constitutional Court of Poland. It has been published widely in Polish media, here is a translation:

When the new Acts on the Constitutional Tribunal enter into force, the period of activity of the Constitutional Tribunal of the Republic of Poland will come to an end. It will be the end of activity by which a system of constitutionality control guaranteed the efficient defence of the rule of law and a control which systematically strengthened the guarantee of our fundamental rights.

We note with the highest degree of concern and with the highest care for the future of democratic system of the Republic, that the ongoing actions aimed at undermining the role of the Constitutional Tribunal, at lowering its authority in the eyes of society and at limiting or indeed paralysing its functioning – have resulted in a dramatic situation where the most fundamental mechanism for the protection of the rule of law will be annihilated. This will happen first and foremost as by virtue of the new Acts, persons who do not possess a judicial mandate to perform judicial functions will be allowed to hear cases in the Constitutional Tribunal. Their appointment, as it results from the Tribunal's jurisprudence, occurred in violation of the Constitution. At the same time, the judges who were constitutionally appointed, and who have remained outside the composition of the Tribunal, will not be able to assume their office as they have not been invited by the President of the Republic to take the oath of office.

This state of affairs will inevitably deepen the constitutional crisis and destabilise the rule of law. In this situation it will be Polish citizens that will be harmed the most: citizens who will be deprived of the values of legal security and the foreseeability of law. Primarily, however, Polish citizens will be deprived of the guarantee of protection of their rights and freedoms which are enshrined in the Constitution – including the right to initiate a constitutional complaint.

We are therefore appealing to the President of the Republic to prevent this situation from occurring and to accept the oath of office from the three constitutionally appointed judges of the Constitutional Tribunal. Furthermore, we are appealing to him to veto the acts, the aim of which is to sustain the state of unconstitutionality and to perpetuate only an apparent functioning of the Constitutional Tribunal. This is the last moment when it is still possible to avoid dramatic repercussions resulting from all the attempts aimed at doing away with the real control of constitutionality of law in our state.

Simultaneously, we are appealing to all lawyers – the group most aware of the negative consequences resulting from the constitutional crisis in Poland – to support our appeal. We are also addressing these groups and ask them to refrain from participating in actions that legitimate the current state of affairs and that could perpetuate the state of a permanent infringing of the Constitution.

This post has previously been published on the [EUI Constitutionalism and Politics](#) blog. We thank Prof. Dr. Gábor Halmai and his team for the translation and the opportunity to spread this statement.